Supreme Court of the United States.

OCTOBER TERM, 1901.

ORIGINAL.

STATE OF MINNESOTA, *Complainant,*

vs.

NORTHERN SECURITIES COMPANY, *Defendant.*

BRIEF ON BEHALF OF DEFENDANT IN OPPOSITION TO APPLICATION FOR LEAVE TO FILE BILL OF COMPLAINT.

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WASHINGTON, JANUARY 27, 1902.

[Supplemental note.]

Since this brief was prepared, and on the 24th of January, counsel for defendant received a printed copy of an amended or modified bill of complaint to be presented on behalf of the State of Minnesota, but no modification has been intimated of the printed suggestions filed in support of the original bill. The principal change in this amended bill seems to be the omission of the Minnesota Anti-Trust Act of 1899. As it is not entirely clear that this act is abandoned as a basis of the alleged cause of action, and as there is not sufficient time to recast the brief, which has been prepared for submission to the court on Monday, the 27th instant, no change has been made in the form of the argument. In any event, however, the substance of the argument would not be modified, for the nature of anti-trust statutes is clearly analogous to that of anti-consolidation statutes. Both classes of legislation seek to accomplish similar ends and are similar exercises of the police power.

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The defendant submits that the bill of complaint proposed to be filed on behalf of the State of Minnesota does not present a controversy of a civil and judicial nature between a state and a citizen of another state justiciable in this court, and that no state can call upon this court to enforce its penal or police laws in other states.

It is difficult to gather from the bill of complaint or the printed suggestions exactly what act in violation of any statute of Minnesota is relied on as the foundation of the alleged cause of action; but it may fairly be said that, in its final analysis, the bill of complaint asks this court to restrain by injunction a citizen of New Jersey from doing there acts which are entirely lawful according to her laws and which are sanctioned by her statutory policy, simply because those acts violate or evade or tend to circumvent the public or penal or

police laws of the complainant state. There is no suggestion that the acts complained of are not entirely lawful in the State of New Jersey, or that it is not within the corporate powers of the defendant corporation as an investment company to acquire and hold the stocks of railway companies. The sole ground of complaint is the alleged violation *in New Jersey* of certain enactments contained in the statutes of Minnesota. The injunction prayed for would be nothing more or less than an order compelling the defendant to obey in New Jersey the laws of Minnesota. Stated in different terms, the court is urged to entertain jurisdiction at the suit of the State of Minnesota for the purpose of restraining a private corporation, which is a citizen of another state, domiciled and doing business in the state of its organization and under her laws, from acquiring, holding or exercising any rights of ownership in respect of shares of the capital stock of two railway companies located in Minnesota, whose lines happen to be parallel or competing, on the ground that the acquisition and holding of such stocks may tend to evade or defeat the statutory policy or penal laws of Minnesota.

It should be appreciated that no relief is sought against the Great Northern Railway Company or against the Northern Pacific Railway Company, although both are alleged to be corporations of the State of Minnesota, and although both are clearly within the jurisdiction of the courts of that state. These two corporations confessedly have not sinned against any statutory or constitutional provision of Minnesota, and, so far as this bill of complaint is concerned, no relief can be granted against them, for they are not made

parties. At best, the grievance is that the ownership of the shares of these two corporations, formerly vested in several persons, has now been united in one holder, the defendant corporation. But reference is made to no Minnesota statute, and none exists, which prohibits individuals or copartnerships or private corporations from acquiring and holding stocks of parallel or competing railroad companies. On the contrary, the incorporating statute of the Great Northern Company, as well as the general laws of Minnesota, expressly make the stock personal property, and, of course, it is transferable as such wherever the owner desires to sell or may find his market.[1] If the state had desired to prevent what is alleged to have happened, namely, the acquisition of the stock of one company by the individual holder of the stock of another, the legislature might have attempted to limit this right to acquire property by appropriate legislation, which would present a different question and be then of doubtful constitutionality. The significance of this failure of the legislature to inhibit such joint holding of the stocks of two parallel or competing companies is most marked in view of the statement contained in the opinion of Mr. Justice Brown in *Pearsall* v. *Great Northern Railway*, 161 U. S. 646, 671, and *Louisville & Nashville Rd.* v. *Kentucky*, 161 U. S. 677, 693, as to the power of individual owners to own such stocks. The legislature of Minnesota, however, has not seen fit and may never see fit to pass an act prohibiting an individual or copartnership or private corporation from acquiring, owning and hold-

[1] Session Laws Minn. 1856, p. 294; Gen. Stats. 1866, c. 34, § 39; Gen. Stats. 1878, c. 11, § 3; Gen. Stats. 1894, § 1510.

ing stocks of two parallel or competing railway companies; in a word, it is now a *casus omissus*.

If it be urged that the word "managers" contained in the act of 1874 applies to Mr. James J. Hill, Mr. William P. Clough and others, who were directors or officers of the Great Northern Company, and that they could not individually, while acting as managers, acquire the stock of a parallel or competing company, it may be said that the act of 1881 omits all reference to "managers" and that this subsequent act impliedly repealed the prior act which covered exactly the same subject matter. See appendix; *United States* v. *Caflin*, 97 U. S. 546, 551. At any rate, these gentlemen and numerous others whose names are mentioned in the bill of complaint, are not parties to this suit. Their rights cannot be adjudicated or their acts enjoined in their absence. They were omitted because to make residents of Minnesota parties defendant would have ousted the court of jurisdiction. It will strike the court as a novel proposition that the legal right of the Northern Securities Company to acquire and hold property under the laws of New Jersey is to be tested and determined by the individual character or relations of one or more of her stockholders or directors.

The alleged threatened injury to the proprietary interests of the State of Minnesota, alleged in the bill of complaint, is altogether remote and fanciful. It is apprehended, among other injuries, that the cost of operating and maintaining the public institutions of the state may be greater if freight rates are increased. Another apprehended injury is to her sources of taxation and her revenue therefrom. Everything

in the wide range of matters concerning the public welfare is alleged as threatened. But no direct or actual damage is shown. Of course, these apprehended injuries which may never happen or be attempted, are all too remote, conjectural and contingent. They are mere fears and fancies. Moreover, the state is not at the mercy of railroads; she has full power to prevent unreasonable charges; she is now exercising that power by her Railroad Commissioners, and the present rates cannot be raised without the action of the Commission.[1]

But the most astonishing extreme reached by the bill of complaint is in the allegation that the Northern Securities Company, a private corporation or association organized under the laws of New Jersey (bill, fol. 44), is "a Railroad Corporation within the meaning of the laws of the State of Minnesota" (fol. 86). Yet, it is only upon this forced and preposterous contention that the State of Minnesota can possibly point out any supposed breach of her laws. As, however, the company is clearly not a railroad corporation in any sense, and as it is obviously a simple investment company organized in New Jersey (fols. 45–57), this branch of the complainant's contention need not be further noticed.

I.

Section 2 of Article III of the Constitution extends the judicial power of the federal government "to controversies between a state and citizens of another state."

[1] Laws 1887, c. 10, § 10; Gen. Stat. Minn., ed. 1894, vol. 1, § 388; as amended by Laws 1895, ch. 91, § 1, and Laws 1897, ch. 67, § 1.

The Judiciary Act of September 24, 1789 (c. 20, § 13; 1 Stat. 80), early defined the scope of this clause, and interpreted it to refer only to controversies of a civil nature; in other words, to civil controversies of which judicial tribunals ordinarily took cognizance. "That act, which has continued in force ever since, and is embodied in § 687 of the Revised Statutes, was passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument, and is contemporaneous and weighty evidence of its true meaning." Mr. Justice Gray in *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 297. See also *Chisholm* v. *Georgia*, 2 Dall. 419, 431, 432; *Cohens* v. *Virginia*, 6 Wheat. 264, 398, 399; *The State of Rhode Island* v. *The State of Massachusetts*, 12 Pet. 657, 722, 731; *Hans* v. *Louisiana*, 134 U. S. 1, 12, 14; *Capital Traction Co.* v. *Hof*, 174 U. S. 1, 9.

In the *Wisconsin* case, Mr. Justice Gray reviewed all the cases to that date (1888), and, speaking for the unanimous court, said (p. 293):

> "From the first organization of the courts of the United States, nearly a century ago, it has always been assumed that the original jurisdiction of this court over controversies between a state and citizens of another state, or of a foreign country, does not extend to a suit by a state to recover penalties for a breach of her own municipal law. This is shown both by the nature of the cases in which relief has been granted or sought and by acts of Congress and opinions of this court more directly bearing upon the question."

It may, therefore, be assumed as settled law that this court will not entertain a suit brought by a state

in this court against a citizen of another state, to enforce a penalty or a penal statute.

The enactments now sought to be given extra-territorial force and obligation declare the local public policy of Minnesota in respect of the consolidation of parallel or competing lines of railway and in respect of monopolies in trade and commerce. Three statutory enactments are set forth in the bill of complaint, as applicable to the subject matter before the court.[1] These statutes are printed at length in the appendix to this brief. It is manifest that they are in their essence penal or police laws.

It is, perhaps, doubtful whether the Minnesota anti-trust act of 1899 applies to the consolidation of railroad corporations or bears upon that question; but as the bill of complaint and the printed suggestions rely upon this statute as one of the essential elements of the cause of action, it will be assumed to apply, but only for the sake of argument. On that assumption, it will be pertinent to call attention to the fact that, in neither the bill of complaint nor in the printed suggestions filed in support of it, is there any mention of section 2 of the anti-trust act, which provides for fine and imprisonment. Obviously, the nature of this legislation could not be intelligently determined without considering the provision imposing the penalty and punishment. Section 2 of the act is, therefore, printed below at length, followed by sections 3 and 6, which will show the true character of the legislation and the nature of the remedy.

[1] Gen. Stats. Minnesota 1894, § 2715, p. 742; Gen. Laws 1874, ch. 29, p. 154; *ib.*, 1881, ch. 94, p. 109; Gen. Laws 1899, ch. 359, ch. 487.

"SEC. 2. Every person who shall either directly or indirectly make any such contract, agreement or arrangement, or enter into any such combination, conspiracy or trust as defined in section one (1) of this act, shall be guilty of a felony and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or by imprisonment in the state's prison for not less than three (3) years nor more than five (5) years.

SEC. 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this state which shall hereafter either directly or indirectly make any contract, agreement or arrangement, or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any combination, trust or monopoly, except as to the final disposition of its property under the laws of this state.

Any corporation organized under the laws of any other state, territory or country, which is now located or which may hereafter be located within this state, and engages in the manufacture, production or sale of any article therein which shall either directly or indirectly make any contract, agreement or arrangement or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, be prohibited from doing any further business in this state, except as to the final disposition of its property under the laws of this state. . . .

SEC. 6. That for the purpose of carrying out the provisions of this act, any citizen of this state may, and it is hereby declared to be the duty of the attorney-general, to institute,

> in the name of the state, proceedings in any court of competent jurisdiction against any person, partnership, association or corporation which may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforcement of section three (3) hereof. *Provided*, that when such proceedings are instituted by any one other than the attorney-general, the state shall not be in any manner liable for the costs or for any of the expense of such proceedings. And *provided, further*, that when the attorney-general deems it necessary, he is hereby authorized to employ counsel to assist in the prosecution of any action brought under the provisions of this act."

It will thus be seen that section 2 of the act of 1899 provides a pecuniary fine or imprisonment for disregard or breach of the act; that section 3 extends the act to corporations and, in addition to the pecuniary penalty, makes their charters, rights and franchises subject to forfeiture, and that section 6 provides the remedy *in the name of the state*. These provisions clearly demonstrate the penal character of this legislation.

The omission to print section 2 in the bill of complaint and printed suggestions was, of course, either inadvertent or because the state deemed the section immaterial. Yet, section 2 will doubtless be considered by the court as of controlling importance in view of the authoritative decision in *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 293, quoted above.

As to individuals, the punishment for a breach of the law is a fine of from $500 to $5,000 or imprisonment. A corporation (section 3) "shall, in addition to the penalty prescribed in section two (2) of this act forfeit its charter, rights and franchises." Section 6 provides that any

citizen may, and it is "declared to be the duty of the attorney general, to institute, *in the name of the state* proceedings in any court of competent jurisdiction . . . for the purpose of imposing the penalties imposed by this act or securing the enforcement of section three (3) hereof." No other penalty or punishment or remedy is provided. The statute is, therefore, brought within the settled rule that where a right is created or an act is prohibited and a specific penalty or punishment or remedy is provided, the enforcement of the law is confined to this penalty or punishment and the remedy is exclusive.

It will indeed be a surprising revelation if this court shall now declare that it has original jurisdiction to enforce the anti-trust laws of the various states against citizens of other states domiciled in such other states (*United States* v. *Lathrop*, 17 Johns. 4, 21, 32; *State ex rel.* v. *Associated Press*, 159 Mo. 410, 466).

Appreciating that no such jurisdiction is likely to be assumed, the State of Minnesota further urges, on page 9 of the printed suggestions, that "it is also claimed this is a violation of the federal anti-trust act." But the act of Congress (26 Stat. 209; c. 647, § 7), although it gives to individuals a right to recover damages at law, establishes no new right in individuals to bring suits in equity. As is well known, the remedy in equity is confined to the Attorney-General of the United States, and no right is conferred upon any state or individual to sue for equitable relief (*Ib.*, § 4). It was clearly the intention of Congress specifically to limit the right in equity to proceedings at the suit of the Attorney-General.

II.

One of the fundamental rules on the subject of international law, which all courts recognize, is that no state or nation can, by its laws, directly affect or bind property out of its own territory, or persons not resident therein. This rule finds its clearest statement in Mr. Justice Story's work on the Conflict of Laws, §§ 7, 8 and 20, whose language has been largely adopted by this court in many cases, namely:

> "SEC. 7. It is plain that the laws of one country can have no intrinsic force, *proprio vigore*, except within the territorial limits and jurisdiction of that country. . . . No other nation, or its subjects, are bound to yield the slightest obedience to those laws. Whatever extra-territorial force they are to have is the result, not of any original power to extend them abroad, but of that respect which from motives of public policy other nations are disposed to yield to them. . . .
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> SEC. 8. . . . And, accordingly, it is laid down by all publicists and jurists, as an incontestable rule of public law, that one may with impunity disregard the law pronounced by a magistrate beyond his own territory. . . .
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> SEC. 20. Another maxim, or proposition, is, that no state or nation can, by its laws, directly affect, or bind property out of its own territory, or bind persons not resident therein, whether they are natural born subjects, or others. This is the natural consequence of the first proposition; for it would be wholly incompatible with equality and exclusiveness of the sovereignty of all nations, that any one nation should be at liberty to regulate either persons or things not within its own territory. It would be equivalent to a declaration, that the sovereignty over a territory was never exclusive in any nation, but only concurrent with that of all nations; that each could

> legislate for all and none for itself; and that all might establish rules, which none were bound to obey. The absurd results of such a state of things need not be dwelt upon. Accordingly Rodenburg has significantly said, that no sovereign has a right to give the law beyond his own dominions; and if he attempts it, he may be lawfully refused obedience; for wherever the foundation of laws fails, there their force and jurisdiction fail also. *Constat igitur extra territorium legem dicere licere nemini, idque si fecerit quis, impune ei non pareri; quippe ubi cesset statutorum fundamentum, robur, et jurisdictio.*[1] P. Voet speaks to the same effect: *Nullum statutum sive in rem, sive in personam, si de ratione juris civilis sermo instituatur, sese extendit ultra statuentis territorium.*[2] Boullenois (as we have seen) announces the same rule: *De droit étroit, toutes les loix, que fait un souverain, n'ont force et autorité que dans l'étendue de sa domination;*[3] and indeed it is the common language of jurists. Mr. Chief Justice Parker has recognized the doctrine in the fullest manner. 'That the laws' (says he) 'of any state cannot by any inherent authority be entitled to respect extra-territorially, or beyond the jurisdiction of the state, which enacts them, is the necessary result of the independence of distinct sovereignties.'[4]

So, in *Houston* v. *Moore*, 5 Wheat. 1, 69, Mr. Justice Story, delivering the opinion of the court, said:

> "It is a general principle too in the policy, if not the customary law of nations, that no nation is bound to enforce the penal laws of another within its own dominions. The authority naturally

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[1] Rodenburg, de Stat., ch. 3, § 1, p. 7.

[2] Voet, de Stat. § 4, ch. 2, n. 7, p. 124; *Id.* 138, 139, edit. 1661.

[3] 1 Boullenois, des Statut. Princip. Gén. 6, p. 4; *Id.* ch. 3, Observ. 10, p. 152.

[4] *Blanchard* v. *Russel*, 13 Mass. 4. The same doctrine is reasoned out with great ability in the opinion of Mr. Chief Justice Taney, in the case of *Bank of Augusta* v. *Earle*, 13 Peters, 584–591.

> belongs, and is confided, to the tribunals of the nation creating the offences. In a government formed like ours, where there is a division of sovereignty, and, of course, where there is a danger of collision from the near approach of powers to a conflict with each other, it would seem a peculiarly safe and salutary rule, that each government should be left to enforce its own penal laws in its own tribunals" (See also *The Antelope*, 10 Wheat. 66, 123).

In *Dred Scott* v. *Sandford*, 19 How. 393, 460, Mr. Justice Nelson said:

> "Every state or nation possesses an exclusive sovereignty and jurisdiction within her own territory; and her laws affect and bind all property and persons residing within it. It may regulate the manner and circumstances under which property is held, and the condition, capacity, and state, of all persons therein; and, also, the remedy and modes of administering justice. And it is equally true, that no state or nation can affect or bind property out of its territory, or persons not residing within it. No state, therefore, can enact laws to operate beyond its own dominions, and, if it attempts to do so, it may be lawfully refused obedience. Such laws can have no inherent authority extra-territorially. This is the necessary result of the independence of distinct and separate sovereignties."

The cases of *Pennsylvania* v. *The Wheeling &c. Bridge Company*, 9 How. 647; 11 How. 528; 13 How. 518 and 18 How. 421, 429, and *Missouri* v. *Illinois & Chicago District*, 180 U. S. 208, 218, are not at all inconsistent with the fullest application of the principle that the penal or police laws of a state have no force or obligation in another state, and these precedents do not in any way affect the doctrine of *Wisconsin* v. *Pelican Ins. Co.* Neither of these cases involved any attempt to give a

state statute the slightest extra-territorial force or obligation. In the *Wheeling Bridge* case as in the *Chicago Drainage* case, the suit was in equity to restrain a nuisance: in the former, the nuisance was a direct and actual damage to property owned by the state in its individual capacity; in the latter, the nuisance was dangerous to the health of the people of Missouri. Each was a case which involved a controversy of a civil nature, and in each the state showed a special and peculiar injury resulting from the nuisance "such as would enable a private person to maintain a similar action in another court," and thus made manifest that the controversy was one of a civil nature as distinguished from a penal or police prosecution (*South Carolina* v. *Georgia*, 93 U. S. 4, 14; *Pennsylvania* v. *Wheeling &c. Bridge Co.*, 13 How. 518, 559). If a citizen of Pennsylvania, instead of the state, had owned the canal, a suit brought by him to enjoin the construction of the bridge would have been a controversy of a civil nature. A suit brought by a citizen of Missouri to restrain the pollution or diversion of a river in which he had a special or peculiar interest would be a controversy of a civil nature. The injury threatened would be physically present and sustained within the state itself. The injury would be direct and not speculative; it would be actual and not contingent or fanciful or merely possible.

On the other hand, take the case at bar. The plea of damage is most remote and fanciful and conjectural. It is based solely on what may possibly happen if there be an abuse of the power of the defendant as owner

of the stocks of competing railroads, and if the defendant should consolidate the two roads; but, in the eye of the law, such theoretically possible damage cannot be said to have any reasonable certainty or probability. No individual could maintain an action upon any such fears or fanciful theory of damage or contingent injury.

There is, therefore, no analogy between the case of a nuisance threatening an immediate, actual, physical injury to property or health, and the case alleged in the present bill of complaint, which is no more and no less than a simple attempt to enforce extra-territorially the penal or police laws of Minnesota, remotely affecting property.

It is not disputed that acts may be done in New Jersey which, although permissible or even praiseworthy there, may be a violation of the penal laws or constitute a nuisance or libel or other tort or crime in Minnesota, where those acts take effect. A man who erects a nuisance in one state which takes effect in another state, or who causes a libel to be circulated in another state, or who shoots a man across a frontier or state line, or who sends poisonous or contagious articles into another state, is undoubtedly subject to punishment in that state whenever its courts can get jurisdiction over his person; but if those courts cannot get jurisdiction over his person, they cannot try him. Jurisdiction of the offense or subject matter and judicial power to try the offender are very different things. The first exists whenever the offense was committed within the state; the other, when the offender is brought into court, and not before. *Adams* v. *The People*, 1 N. Y.

(Comstock) 173, 179; *State* v. *Hall*, 115 N. C. 814; 28 L. R. A. 289, 291.

The fact that a state may be unable to obtain jurisdiction of the offender is not a test of its jurisdiction over the offence; for such inability may exist where the person who committed the offence was, at the time of its commission, within the territory, but subsequently fled to the jurisdiction of another state or country. Such other state may give him up as a matter of comity; but that is widely different from permitting the foreign state to come into her courts and enforce its own laws or enjoin their violation.

This principle has been maintained by the executive department of the Government with regard to our foreign relations. We decline to recognize or enforce the penal laws of other countries directly or indirectly. Thus, in the "blue book" covering the "Report on Extra-territorial Crime and the Cutting Case" by Mr. Moore to Mr. Bayard, Secretary of State, published in 1887, it was, among other things, said (p. 125):

> "For a nation to hold its penal laws to be binding on all persons within the territory of another state, is to assert a right of sovereignty over the latter, and impair its independence. A state may, if it see fit, tie its criminal law about the neck of its citizen and hold him answerable for its violation everywhere. But even this power of control has its limitations. For the citizen so bound is nevertheless not exempt from obedience to the law of the place where he may be, and it would be no defense to a charge of having violated it to say that the act complained of was required by the penal law of his own country. The local allegiance would be paramount; his double allegiance would be

his misfortune, for relief from which he could appeal to the mercies of his own government alone.

When a man in his own country violates its law, he is answerable for his misconduct to those laws alone, and it is his right to be tried under them and in accordance with the methods of procedure they prescribe. To say that he may be answerable to another law because the person he attacks is a foreigner would in principle subject him in his own country not merely to a dual but to an indefinite responsibility. Such pretension is an assertion not only of an *imperium in imperio*, but of *imperia in imperio*. It would expose citizens and all other persons in the United States to liability to as many penal systems as there happened to be nationalities represented in the foreign population. Every fresh accession to that population would extend the operation and potentially increase the variety of foreign penal systems in force in this country.

The mere statement of such a proposition is a sufficient refutation of it."

The statutory enactments of the State of Minnesota, therefore, have, of themselves, on what must be deemed axiomatic principles, no force or obligation whatever in the State of New Jersey as affecting or binding citizens of New Jersey domiciled and acting there. Consequently, the defendant, as a citizen of New Jersey, may do in that state anything that her laws permit, and no federal court can interfere by injunction to enforce there the penal and police laws of another state.

III.

If we assume that the act of 1899 contains no penalties or punishments, but simply prohibits the

doing of certain acts tending to create a monopoly in trade and commerce, or if we assume that the acts of 1874 and 1881, which contain no penalties, are alone relied on and sought to be enforced by the State of Minnesota, does this prohibitory legislation have any extra-territorial force and obligation? Can it be possible that such legislation is not within the principle of the decision in *Wisconsin* v. *Pelican Ins. Co., supra?* Do such enactments in the nature of things differ at all from any other police statute which imposes penalties? Do they differ in principle from any general police law which forbids acts and imposes penalties for breach or disobedience? Surely, it cannot be maintained that the nature of a police law without penalties is so different from a similar law with penalties, that the former may properly be given extra-territorial force and obligation, and the latter not. A penalty is but the punishment for disobedience; it does not determine the nature of the law. Obviously, the same reasons should operate in both cases; and if a law imposing a punishment or penalty cannot be enforced extra-territorially, a different rule cannot apply to a similar law, because it omits the penalties and merely commands obedience.

The nature of laws prohibiting the consolidation of railroad companies is substantially similar to that of the anti-trust acts. Such laws have always been recognized as enacted under the police power of the state (*Louisville & Nashville R'd* v. *Kentucky*, 161 U. S. 677, 695). Both classes of legislation seek the same end and are exercises of the police power. So also as to the regulation of railroad rates. A suit to enforce such regulations, to enjoin their breach, or to

collect penalties would not be a "suit of a civil nature." Most interesting and exhaustive discussions of the point will be found in the opinion of Mr. Justice Brewer, then Circuit Judge, in the case of *State of Iowa* v. *Chicago, B. & Q. R. Co.*, 37 Fed. Rep. 497, and also in the cases of *Dey* v. *Chicago, M. & St. P. Ry. Co.*, 45 Fed. Rep. 82; *Moloney* v. *American Tobacco Co.*, 72 Fed. Rep. 801, 802, and *State of Indiana* v. *Alleghany Oil Co.*, 85 Fed. Rep. 870. See also *Arkansas* v. *Kansas & Texas Coal Co.*, 183 U. S. 185.

All systems of jurisprudence necessarily divide themselves into the definition and protection of public and private rights, and the punishment and redress of public and private wrongs. Legislation which creates and enforces such rights is said to be either civil or penal. Laws which forbid certain acts for the public good, and which are to be enforced by the state itself—which are enacted to secure public and not private rights—which punish or forbid a wrong to the public as distinguished from a wrong to the individual—which are designed to redress public and not private injuries—are police in their very nature and are generically called "penal," although the term may not be strictly accurate. When courts say that penal laws cannot be enforced beyond the jurisdiction of the state which enacts them, it is not intended to assert that a penalty imposed by statute for a private wrong, or as a redress or indemnity for a violated private right, could not be so enforced. What is meant is that those penal provisions which are in their essence police regulations and intended to enforce obedience to public laws and to redress public wrongs cannot be given extra-territorial

force and obligation. It is because they are, in their essential nature, public or police laws, as distinguished from private or civil laws, that the courts of a foreign state decline to enforce them. They will not compel their own citizens to obey such laws of other states.

The fundamental test of the true nature of a law must always be whether, in its essence and without regard to form, it is designed to prevent or redress public wrongs and mischiefs, or is designed to protect and redress violated private rights. In the former case, it is penal or police; in the latter, private or civil. If, as here, a foreign state "claims the right to maintain [an] action . . . by virtue of its sovereign powers for and in behalf of the citizens of the state" (suggestions, p. 6) to enforce its penal and police laws, the controversy is not of a civil nature or one of which courts of other sovereignties take cognizance (Hardcastle on Statutory Law, 3rd ed., 1901, pp. 450, 451; *Huntington* v. *Attrill*, [1893] App. Cas. 150; *Same* v. *Same*, 146 U. S. 657; Dicey, Conflict of Laws, pp. 220, 221). If, however, an action is upon a statute which is designed to prevent or redress an injury to property or persons, and one which in its essence is civil, and determinable by those rules which guide courts in adjudicating between individuals, then, if the injury be actual and direct, and not speculative or remote, the right may be redressed or the injury prevented in a suit of a civil nature in the courts of other states.

IV.

The State of Minnesota, however, contends that jurisdiction of the suit should be entertained, be-

cause relief is sought in equity to protect her alleged proprietary interest in the enforcement of her prohibitory laws, although no jurisdiction in equity is created or conferred by any statute and although no direct or actual damage to property or persons is alleged; in other words, the contention would seem to be that the true character of the subject matter of the controversy is transformed from the enforcement of a penal or police statute to a "controversy of a civil nature" within the meaning of the Judiciary Act of 1789, or Sec. 687 of the Revised Statutes, simply because the relief sought is an injunction restraining the threatened breach of those laws. Of course, the real nature of legislation cannot be affected or determined by the mere form of procedure, any more than the absence of a penalty or other punishment can change the real nature of a police law.

As was well said by Showalter, C. J., in *Moloney* v. *American Tobacco Co.*, 72 Fed. Rep. 801, 802, which was an information in equity brought by the Attorney-General of Illinois to restrain the violation of the state statute forbidding trust combinations—

> "A question here is whether or not the present proceeding is a suit of a civil nature. This court does not adjudicate upon penal or criminal statutes of a state. The purpose of this information is to enforce against the American Tobacco Company the prohibition from doing business in Illinois, and the cause of action alleged is conduct which, within the meaning of the act, if it have any meaning, is an offense or misdemeanor. The information does not show, as the ground of action, any contract right in the state, or any property right or easement vested in the state, as trustee, repre-

> senting the public or otherwise. The action is based on a statute or rule of conduct which the state, as a governing agent, has prescribed, and the violation of which, on the theory of the information, is an offense or misdemeanor. This is not, in its nature, a suit to recover for, or stop the continuance of, an injury. It is the prosecution of an offender against a criminal statute. This defendant corporation is not bound to refrain from carrying on a monopoly in cigarettes because the state, as a sovereign, or in any other capacity, is damaged thereby, but because the state, as a sovereign, has made a rule to the contrary. The damage, whatever it may be, would be precisely the same if no such rule or statute had been enacted. Yet, in the latter case, there would be no action. The information, therefore, as already said, has no other purpose than the enforcement of a penal statute. The supreme court of the United States in *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 8 Sup. Ct. 1370, ruled that an action of debt by a state to recover on a judgment for a fine was not a suit of a civil nature. So, here, the circumstance that an injunction is the instrument, and apparently the only instrument, of the state's displeasure, does not change the essential nature of the conduct complained of, or the legal sanction to which said conduct must be referred."

It will at once occur to the court that every police regulation of a state may incidentally affect her property or hospitals or schools or prisons or insane asylums or other institutions (complaint, fol. 7). Indeed, if people could be restrained by injunction from committing crimes, the state would save much expense. Every anti-trust law presumably affects necessaries which a state must

buy for her schools, hospitals, prisons, asylums, institutions, &c. Every anti-consolidation statute may affect railroad rates or taxes. Is it the theory of our system of government that such *incidental and theoretical* proprietary interests vest jurisdiction in this court to give extra-territorial force and obligation to the police laws of any state at the suit of that state against the citizens of another state! Does this theoretical and remote proprietary interest of one state make it the duty and obligation of citizens of other states to obey such laws? It may be vitally to the interest of one state to protect what another would condemn, to foster what another would prohibit, to encourage what another would destroy. Does jurisdiction exist to restrain the citizens of one state from doing any act which may possibly affect injuriously the property interests or the revenue of another state?

Let us suppose that a number of citizens of New York are engaged in that state in a scheme, which, if successful, would conceal from taxation property in Minnesota liable thereto, or hinder the collection of taxes thereon, or otherwise circumvent her tax laws. Could the State of Minnesota, in this court or elsewhere than in her own courts, maintain a suit to restrain such acts?

The State of Minnesota has a stringent pure food law, forbidding the sale within the state of imitations of articles of food, such as oleomargarine. One or more persons, citizens of another state, are engaged in the state of their residence in manufacturing oleomargarine in imitation of butter intended to be shipped into Minnesota, and there sold to consumers. Would a bill to

enforce this food statute, by enjoining the carrying out of such intention, be entertained in this court?

The State of Minnesota, like most of the other states, has a stringent insurance law, forbidding unlicensed companies from insuring property in the state. One or more companies of other states are, without license, issuing policies covering property within the state. Can Minnesota sue in this court to enjoin such violation of her statutes?

V.

If the public or police laws of one state are ever recognized and enforced in the courts of a sister state, it is only from considerations of utility and the mutual convenience of states, *ex comitate, ob reciprocam enim utilitatem*, and whatever force and obligation they are permitted to have in such sister state depend solely upon the comity exercised by the latter. Story, Conflict of Laws, secs. 18–23; *Hoyt* v. *Sprague*, 103 U. S. 613, 630; *Lamar* v. *Micou*, 112 U. S. 452, 472. New Jersey has never recognized or extended her comity to any laws of other states of such a character as are alleged in the bill of complaint, and no state, so far as we know, has ever enforced the public penal or police laws of another state. Proceedings or prosecutions to enforce police or penal laws were, at the time the Constitution was adopted, and ever since have been, considered to be such as would not be entertained by the judiciary of the foreign state at all. Thus, in *Wisconsin* v. *Pelican Ins. Co.*, *supra*, Mr. Justice Gray said at pp. 287, 289:

> "Notwithstanding the comprehensive words of the Constitution, the mere fact that a state is the plaintiff is not a conclusive test that the controversy is one in which this court is authorized to grant relief against another state or her citizens. . . .
>
> The object of vesting in the courts of the United States jurisdiction of suits by one state against the citizens of another was to enable such controversies to be determined by a national tribunal, and thereby to avoid the partiality, or suspicion of partiality, which might exist if the plaintiff state were compelled to resort to the courts of the state of which the defendants were citizens. Federalist, No. 80; Chief Justice Jay in *Chisholm* v. *Georgia*, 2 Dall. 419, 475; Story on the Constitution, §§ 1638, 1682. The grant is of 'judicial power' and was not intended to confer upon the courts of the United States jurisdiction of a suit or prosecution by the one state, of such a nature that it could not, on the settled principles of public and international law, be entertained by the judiciary of the other state at all."

The inquiry is thus presented whether this court can adjudicate what force and obligation shall be extended by the State of New Jersey and her courts to the legislation of Minnesota. Presumably, New Jersey would decline to enforce against her citizens the obligation to obey the police laws of Minnesota, which may differ radically from the laws of New Jersey. Is it possible seriously to contend that it was the intention of the Convention in framing, or of the people in adopting, the Federal Constitution, to confer upon the federal courts the power to determine for any state and against her will what comity she should extend to other states? Even if the courts of New Jersey had de-

clared her willingness to recognize and enforce the laws of Minnesota, it by no means would follow that this court could act and grant relief under that comity. As Mr. Justice Field said in *Mahon* v. *Justice*, 127 U. S. 700, 706, decided at the same term and on the same day as *Wisconsin* v. *Pelican Ins. Co.*, *supra*:

> "If there were any such comity, its enforcement would not be a matter within the jurisdiction of the courts of the United States. By comity nothing more is meant than that courtesy on the part of one state, by which within her territory the laws of another state are recognized and enforced, or another state is assisted in the execution of her laws. From its nature the courts of the United States cannot compel its exercise when it is refused; it is admissible only upon the consent of the state, and when consistent with her own interests and policy."

The case of *Commonwealth of Kentucky* v. *Dennison, Governor, &c.*, 24 How. 66, 107, shows how distinctly this court has recognized that it cannot enforce those governmental regulations and police laws which are essentially within the comity of states, to be conceded or withheld at their will. In that case, jurisdiction of the parties was clearly conferred by the Constitution, for it was practically a suit between two states; but notwithstanding the fact that Kentucky sought to have this court enforce against Ohio a duty imposed by the Federal Constitution itself (art. IV.), this court declined to entertain jurisdiction or to grant the relief on the ground that it was not within the judicial power to enforce what must rest on comity. Mr. Chief Justice Taney, delivering the unanimous opinion of the court, said (p. 107):

"The demand being thus made, the act of Congress declares, that 'it shall be the duty of the executive authority of the state' to cause the fugitive to be arrested and secured, and delivered to the agent of the demanding state. The words, 'it shall be the duty,' in ordinary legislation, imply the assertion of the power to command and to coerce obedience. But looking to the subject-matter of this law, and the relations which the United States and the several states bear to each other, the court is of opinion, the words 'it shall be the duty' were not used as mandatory and compulsory, but as declaratory of the moral duty which this compact created, when Congress had provided the mode of carrying it into execution. The act does not provide any means to compel the execution of this duty, nor inflict any punishment for neglect or refusal on the part of the executive of the state; nor is there any clause or provision in the Constitution which arms the government of the United States with this power. Indeed, such a power would place every state under the control and dominion of the general government, even in the administration of its internal concerns and reserved rights. And we think it clear, that the federal government, under the Constitution, has no power to impose on a state officer, as such, any duty whatever, and compel him to perform it; for if it possessed this power, it might overload the officer with duties which would fill up all his time, and disable him from performing his obligations to the state, and might impose on him duties of a character incompatible with the rank and dignity to which he was elevated by the state. . . .

It is true that, in the early days of the government, Congress relied with confidence upon the co-operation and support of the states, when exercising the legitimate powers of the general government, and were accustomed to receive it, upon principles of comity, and from a sense of mutual and common interest, where no such duty was imposed by the Constitution. And

laws were passed authorizing state courts to entertain jurisdiction in proceedings by the United States to recover penalties and forfeitures incurred by breaches of their revenue laws, and giving to the state courts the same authority with the district court of the United States to enforce such penalties and forfeitures, and also the power to hear the allegations of parties, and to take proofs, if an application for a remission of the penalty or forfeiture should be made, according to the provisions of the acts of Congress. And these powers were for some years exercised by state tribunals readily, and without objection, until in some of the states it was declined because it interfered with and retarded the performance of duties which properly belonged to them as state courts; and in other states doubts appear to have arisen as to the power of the courts, acting under the authority of the state, to inflict these penalties and forfeitures for offences against the general government, unless especially authorized to do so by the state.

And in these cases the co-operation of the states was a matter of comity, which the several sovereignties extended to one another for their mutual benefit. It was not regarded by either party as an obligation imposed by the Constitution. And the acts of Congress conferring the jurisdiction merely give the power to the state tribunals, but do not purport to regard it as a duty, and they leave it to the states to exercise it or not, as might best comport with their own sense of justice, and their own interest and convenience."

There are, it is true, many cases in which extra-territorial force has been allowed to rights based upon the statute law of other states; but a review of these cases will show that in each rights of a purely private nature were concerned, none the less private and individual

because conferred by statute. Courts, for example, have enforced the so-called statutory liability of stockholders or officers of foreign corporations, although such liability is frequently termed a penalty. But relief has been extended not upon the theory that the statutes in question conferred ubiquitous rights, but upon the distinct ground that the rights were in fact contractual and personal, and the penalty or redress was for violated private rights. Thus in *Flash* v. *Conn*, 109 U. S. 371, 377, the court said: "We think the liability imposed by section 10 [of the stockholders' liability act of New York] is a liability rising upon *contract*." And in *Whitman* v. *Oxford National Bank*, 176 U. S. 559, 563, speaking of a similar statute of Kansas, the court said:

> "The liability which by the constitution and statutes is thus declared to rest upon the stockholder, though statutory in its origin, is contractual in its nature."

And for this express reason—because the obligation in its last analysis was, in fact, contractual—this liability has been enforced in other states.

So, likewise, of statutes conferring a right of action for wrongful death. Such statutes are given in other states an apparent force and obligation. The right of action, however, is not based on comity, but after all upon a personal trespass or tort, in its essence a civil injury the world over, and upon the theory that the cause of action has accrued within the jurisdiction of the state which enacted the remedy, and that such statutes are not penal. Such enactments are purely remedial. In *Stewart* v. *Baltimore & Ohio Railroad*

Co., 168 U. S. 445, 448, Mr. Justice Brewer, delivering the judgment of the court, said:

> " A negligent act causing death is in itself a tort, and were it not for the rule founded on the maxim '*Actio personalis moritur cum persona*' damages therefor could have been recovered in an action at common law. The case differs in this important feature from those in which a penalty is imposed for an act in itself not wrongful, in which a purely statutory delict is created. The purpose of the several statutes passed in the states, in more or less conformity to what is known as ' Lord Campbell's Act,' is to provide the means for recovering the damages caused by that which is essentially and in its nature a tort. Such statutes are not penal, but remedial, for the benefit of the persons injured by the death. An action to recover damages for a tort is not local, but transitory, and can, as a general rule, be maintained wherever the wrongdoer can be found."

In *Huntington* v. *Attrill*, 146 U. S. 657, the New York statute making officers of a corporation liable in certain cases for the debts of the company was held to be an act that might be given effect in another state, although even there the power of this court to render it effective against the will of a sister state only came into existence when the statutory remedy had been first reduced in New York into a judgment, and thus brought under the full faith and credit clause of the Constitution. The argument of the opinion was directed to the point of showing that the New York statute was not penal in its essence and was enforceable extra-territorially because of the redress which it afforded for an injured *private* right. Mr. Justice Gray, delivering the opinion of the court, said at page 667 *et seq.*:

"Penal laws, strictly and properly, are those imposing punishment for an offence committed against the state, and which, by the English and American constitutions, the executive of the state has the power to pardon. Statutes giving a private action against the wrongdoer are sometimes spoken of as penal in their nature, but in such cases it has been pointed out that neither the liability imposed nor the remedy given is strictly penal. . . . The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual, according to the familiar classification of Blackstone: 'Wrongs are divisible into two sorts or species: *private wrongs* and *public wrongs*. The former are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals; and are thereupon frequently termed *civil injuries:* the latter are a breach and violation of public rights and duties, which affect the whole community, considered as a community; and are distinguished by the harsher appellation of *crimes* and *misdemeanors*.' 3 Bl. Com. 2.

Laws have no force of themselves beyond the jurisdiction of the state which enacts them, and can have extra-territorial effect only by the comity of other states. The general rules of international comity upon this subject were well summed up, before the American Revolution, by Chief Justice De Grey, as reported by Sir William Blackstone: 'Crimes are in their nature local, and the jurisdiction of crimes is local. And so as to the rights of real property, the subject being fixed and immovable. But personal injuries are of a transitory nature, and *sequuntur forum rei*.' *Rafael* v. *Verelst*, 2 W. Bl. 1055, 1058.

Crimes and offences against the laws of any state can only be defined, prosecuted and pardoned by the sovereign authority of that state;

and the authorities, legislative, executive or judicial, of other states take no action with regard to them, except by way of extradition to surrender offenders to the state whose laws they have violated, and whose peace they have broken. . . .

Beyond doubt, (except in cases removed from a state court in obedience to an express act of Congress in order to protect rights under the Constitution and laws of the United States), a Circuit Court of the United States cannot entertain jurisdiction of a suit in behalf of the state, or of the people thereof, to recover a penalty imposed by way of punishment for a violation of a statute of the state, 'the courts of the United States,' as observed by Mr. Justice Catron, delivering a judgment of this Court 'having no power to execute the penal laws of the individual states.' *Gwin* v. *Breedlove*, 2 How. 29, 36, 37; *Gwin* v. *Barton*, 6 How. 7; *Iowa* v. *Chicago, &c., Railway*, 37 Fed. Rep. 497; *Ferguson* v. *Ross*, 38 Fed. Rep. 161; *Texas* v. *Day Land & Cattle Co.*, 41 Fed. Rep. 228; *Dey* v. *Chicago, &c., Railway*, 45 Fed. Rep. 82, pp. 672, 673. . .

The question whether a statute of one state, which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another state, depends upon the question whether its purpose is to punish an offence against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act. There could be no better illustration of this than the decision of this court in *Dennick* v. *Railroad Co.* 103 U. S. 11."

CONCLUSION.

For over a century of the continuance of an "indestructible union of indestructible states," it has never been found necessary to hold that the penal or police laws of one state should have force and obliga-

tion beyond her territorial jurisdiction. The theory has been that it is wiser and safer to limit such laws and coercive enactments to the confines of the state adopting them. This federal policy heretofore has been generally found adequate to all purposes of promoting order and tranquillity. To overturn it now would open the door to great public mischiefs and create occasion for constant clashing and irritation.

Often, during the first seventy-five years of the national government, states and combinations of states were inflamed, as upon the slavery question, because one state was permitting what was intended to injure institutions of other states and what was considered property therein. Clamor and excited public feeling burned to the white heat. Temporary exigencies and the desirability of peace at any price seemed to dictate the necessity for restraining and preventing acts in one state destructive of the institutions or property of other states. Yet, no one conceived it possible that this court was open for any such redress by injunction as is sought in the present instance.

We have in the past kept straight to the line of state autonomy and sovereignty in this regard. We have recognized that the public policy of one state or section may be dictated by considerations of local welfare or prejudice or interest and may differ radically from the public policy or welfare or prejudices of other states. We have ever looked upon it as one of the main objects of the Constitution to preserve the local self-government of the states. Our peace and progress depend on the continuance of independent local governments, which may freely shape their own

laws and destinies as they think best. Momentous, indeed portentous, would be the declaration by this court that any state may reach beyond her borders and enjoin acts contrary to her public laws, upon the empty and illusory pretext that her revenue may be affected, or the cost of the supplies which she purchases or uses for her universities, hospitals, prisons, insane asylums, &c., increased, by a holding in one ownership of the shares of stock of two parallel or competing railroad companies. This court is not going to embark on any such stormy sea of obscure fear and speculative apprehensions. If it may do so consistently with the intention of the framers of the Constitution, no one can conceive what interference it may not undertake in the local and police affairs of each state.

It is, therefore, submitted that jurisdiction of such a proceeding as the bill of complaint sets forth should not be entertained, because no controversy constitutionally cognizable by this tribunal is presented for adjudication.

Washington, January 27, 1902.

JOHN G. JOHNSON,
JOHN W. GRIGGS,
WILLIAM D. GUTHRIE,
Of counsel for defendant.

APPENDIX.

Act of 1874.

(General Laws Minnesota, 1874; Ch. 29, p. 154.)

An Act relating to railroad corporations and common carriers.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. No railroad corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any other railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line; and the question whether railroads are parallel or competing lines shall, when demanded by the party complainant, be decided by a jury as in other civil issues.

Sec. 2. This act shall take effect and be in force from and after its passage.

Approved March 9, 1874.

Act of 1881.

(General Laws Minnesota, 1881, Ch. 94, p. 109.)

An act to authorize any railroad company to lease, purchase, or in any way become owner of, or to control, any other railroad corporation, or to consolidate therewith.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. Any railroad corporation, either domestic or foreign, whether organized under a general law or by virtue of a special charter, may lease or purchase, or in any way become owner of or control, or hold the stock of, any other railroad corporation, when their respective railroads can be lawfully connected and operated together so as to constitute one continuous main line, with or without branches.

SEC. 2. Any railroad corporation, whether organized under a general law or by virtue of a special charter of the state or territory of Minnesota, or under the laws of any other State or States or Territory, whose lines of railroad now or hereafter constructed within or without this State can be lawfully connected and operated together to constitute one continuous main line, with or without branches, so as to admit of the passage of trains over them without break or interruption, may consolidate their stock and franchises upon such terms as may be agreed upon, so as to become one corporation by any name by them selected.

Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock, in person or by proxy, at either a regular annual meeting thereof, or at a special meeting called for that purpose, by notice of at least thirty (30) days, stating the object of such meeting, to be addressed to each of such stockholders when their place of residence is known, and deposited in the post office, and published for at least three (3) successive weeks in one newspaper in at least one of the cities or towns in which each of said corporations has its principal business office, or by the consent in writing of a majority of such stockholders annexed to such articles; a copy of such articles of consolidation and of the record of such approval or of such consent, accompanied by lists of the stockholders of said corporation, and the number of shares held by each, duly certified by their respective presidents and secretaries, with the respective corporate seals thereto affixed of said corporations, shall be filed for record in the office of the Secretary of State of this State, and of the State or States or Territory by or under whose laws the said corporations parties to such articles of consolidation were created or exist, before any such consolidation shall have any validity or effect. Upon the filing for record of said copies the said corporations shall become merged in the new corporation provided for in said articles, to be known thereafter by the corporate name therein adopted, and shall, within this State, succeed to all the rights, powers, franchises, contracts, privileges, immunities, liabilities, obligations and duties, liabilities to or exemption from taxation, commutations, property, real,

personal and mixed, and things in action, as fully in all respects as the same were possessed by such old corporation or corporations at the time of such consolidation under the laws of this State; and such new corporation shall hold and enjoy the same, and all and every part thereof, without impairment or change as fully in the same manner and to the same extent as if the said consolidation had not taken place. Provided, that all rights of creditors, and all the liens upon the property of either of said old corporations shall be preserved unimpaired, and all the debts, liabilities and duties of either of said consolidating corporations shall thenceforth attach to said new corporation, and be enforceable to the same extent, and in the same manner as if such debts, liabilities and duties had been originally incurred by it. Provided further, that all such corporations shall be subject to the laws of this State and the jurisdiction of the courts of this State in the same manner and to the same extent as domestic corporations.

SEC. 3. No railroad corporation shall consolidate with, lease or purchase, or in any way become owner of, or control any other railroad corporation, or any stock, franchises, rights of property thereof, which owns or controls a parallel or competing line.

SEC 4. This act shall take effect and be in force from and after its passage.

Approved March 3, 1881.

ACT OF 1899.

(Gen. Laws Minnesota, 1899, Ch. 359, p. 487.)

An Act to prevent the organization of trusts and to provide in certain cases for the forfeiture of the charter of corporations organized under the laws of this state, and to prevent corporations, trusts or combinations under certain circumstances from doing business or enforcing contracts in respect thereto, under the laws of this state.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. Any contract, agreement, arrangement, or conspiracy, or any combination in the form of a trust, or

otherwise, hereafter entered into which is in restraint of trade or commerce within this state, or in restraint of trade or commerce between any of the people of this state and any of the people of any other state or country, or which limits or tends to limit or control the supply of any article, commodity or utility, or the articles which enter into the manufacture of any article or [of] utility, or which regulates, limits or controls or raises or tends to regulate, limit, control or raise the market price of any article, commodity or utility, or tends to limit or regulate the production of any such article, commodity or utility, or in any manner destroys, limits or interferes with open and free competition in either the production, purchase or sale of any commodity, article or utility is hereby prohibited and declared to be unlawful.

That when any corporation heretofore or hereafter created, organized or existing under the laws of this state, whether general or special, hereafter unites in any manner with any other corporation wheresoever created, or with any individual, whereby such corporation surrenders or transfers, by sale or otherwise, in whole or in part, its franchise, rights or privileges or the control or management of its business to any other corporation or individual, or whereby the business or the management or control of the business of such corporation is limited, changed or in any manner affected, and the purpose or effect of such union or combination is to limit, control or destroy competition in the manufacture or sale of any article or commodity, or is to limit or control the production of any article or commodity, or is to control or fix the price or market value of any article or commodity, or the price or market value of the material entering into the production of any article or commodity, or in case the purpose or effect of such union or combination is to control or monopolize in any manner the trade or commerce, or any part thereof, of this state, or of the several states, such union, combination, agreement, arrangement or contract is hereby prohibited and declared to be unlawful.

SEC. 2. Every person who shall either directly or indirectly make any such contract, agreement or arrange-

ment, or enter into any such combination, conspiracy or trust as defined in section one (1) of this act, shall be guilty of a felony and, on conviction thereof, shall be punished by a fine of not less than five hundred dollars ($500) nor more than five thousand dollars ($5,000), or by imprisonment in the state's prison for not less than three (3) years nor more than five (5) years.

SEC. 3. Any corporation heretofore or hereafter created, organized or existing under the laws of this state which shall hereafter either directly or indirectly make any contract, agreement or arrangement, or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, forfeit its charter, rights and franchises, and it shall thereafter be unlawful for such corporation to engage in business, either as a corporation or as a part of any combination, trust or monopoly, except as to the final disposition of its property under the laws of this state.

Any corporation organized under the laws of any other state, territory or country, which is now located or which may hereafter be located within this state, and engages in the manufacture, production or sale of any article therein which shall either directly or indirectly make any contract, agreement or arrangement or enter into any combination, conspiracy or trust as defined in section one (1) of this act, shall, in addition to the penalty prescribed in section two (2) of this act, be prohibited from doing any further business in this state, except as to the final disposition of its property under the laws of this state.

SEC. 4. Any contract by any person, partnership, association or corporation, whether domestic or foreign, made in conducting business contrary to the provisions of section one (1) of this act, shall not be enforced in any court of this state in favor of such persons, partnership, association or corporation.

SEC. 5. Any person who shall enter into any correspondence, negotiations or agreement in this state, or who shall, being a resident of this state, go into another state, territory or country, for the purpose of entering into any negotiations or agreement which tend to the formation of any con-

tract or combination forbidden by this act, shall be guilty of a felony, and be subject to all the penalties of this act.

SEC. 6. That for the purpose of carrying out the provisions of this act, any citizen of this state may, and it is hereby declared to be the duty of the attorney-general, to institute, in the name of the state, proceedings in any court of competent jurisdiction against any person, partnership, association or corporation who may be guilty of violating any of the provisions of section one (1) of this act, for the purpose of imposing the penalties imposed by this act, or securing the enforcement of section three (3) hereof. *Provided*, that when such proceedings are instituted by any one other than the attorney-general, the state shall not be in any manner liable for the costs or for any of the expense of such proceedings. And *provided, further*, that when the attorney-general deems it necessary, he is hereby authorized to employ counsel to assist in the prosecution of any action brought under the provisions of this act.

SEC. 7. The word person as used in this act shall be construed to include any corporation or association formed or existing under any law of this state or any other state or country.

SEC. 8. This act shall take effect and be in force from and after its passage.

Approved April 21st, 1899.